

REMARKS

Claims 1-50 were pending in this application. No claims have been added or canceled. Hence, claims 1-50 remaining pending in this application. A clean copy of the currently pending claims is provided in the appendix for the convenience of the Examiner.

Allowable Subject Matter

Applicant gratefully acknowledges the indication of allowable subject matter in claims 32-50.

Claims 7-11 and 29-30 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

Claim Rejections

Claims 1-6, 12-17, 21-25, 27-28, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent 6,428,485 (Rho) in view of US Patent 6,168,563 (Brown).

Claims 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rho in view of Brown and further in view of US Published Patent Application 2002/0076056 (Pavlakos).

Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Rho in view of Brown and further in view of US Published Patent Application 2003/0083591 (Edwards).

These rejections and all grounds on which they are based are respectfully traversed.

Arguments in Support of the Claims

Independent claim 1 is directed to a computer-readable storage medium storing computer-readable instructions for a multimedia user interface for a computer-based automated hearing test. The computer-readable instructions comprise, among other things, a reporting component configured to present a result of the patient's hearing related test in a graphical format, the result including data from the patient information component and the patient testing component that are relevant for a **hearing health professional** to be able to assess the patient's hearing.

An advantage of the above arrangement is that, although the results presented include data that allows the hearing health professional to assess the patient's hearing, this data is presented in a graphical format that is easier and more intuitive for the hearing health professional to interpret. It is important that the hearing health professional be presented with this data in order to make an accurate assessment of the patient's hearing. Prior to the claimed invention, however, such data was presented to the hearing health professional only in a textual or tabular format that was difficult to read and not at all intuitive.

The Examiner contends that it would have been obvious to modify the system of Rho with the teachings of Brown in order to arrive at the claimed invention, and that the motivation for doing so is to provide a simple format for test results that can be reviewed by a patient or a hearing health professional. *Office Action*, p. 3.

Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness because the proposed modification would render the system of Rho unsatisfactory for its intended purpose. MPEP §2143.01(V) states:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (Claimed device was a blood filter assembly for use during medical procedures wherein both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter

assembly. The prior art reference taught a liquid strainer for removing dirt and water from gasoline and other light oils wherein the inlet and outlet were at the top of the device, and wherein a pet-cock (stopcock) was located at the bottom of the device for periodically removing the collected dirt and water. The reference further taught that the separation is assisted by gravity. The Board concluded the claims were *prima facie* obvious, reasoning that it would have been obvious to turn the reference device upside down. The court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top, the water and heavier oils sought to be separated would flow out of the outlet instead of the purified gasoline, and the screen would become clogged.).

"Although statements limiting the function or capability of a prior art device require fair consideration, simplicity of the prior art is rarely a characteristic that weighs against obviousness of a more complicated device with added function." *In re Dance*, 160 F.3d 1339, 1344, 48 USPQ2d 1635, 1638 (Fed. Cir. 1998) (Court held that claimed catheter for removing obstruction in blood vessels would have been obvious in view of a first reference which taught all of the claimed elements except for a "means for recovering fluid and debris" in combination with a second reference describing a catheter including that means. The court agreed that the first reference, which stressed simplicity of structure and taught emulsification of the debris, did not teach away from the addition of a channel for the recovery of the debris.).

In the present case, the purpose of Rho is to allow a **patient** to administer **his/her own** hearing test. *See, e.g., Abstract*. Rho strives to achieve this purpose by providing hearing test results in a manner that would be clear and easy for the **patient** to understand. In particular, Rho displays the hearing test results as a threshold value along with one of five grades of hearing hardness. *See, e.g., Table 1*. To allow the **patient** to assess **his/her own** hearing, each hearing hardness grade is accompanied by the causes and symptoms of the associated hearing loss. *Id.*

Based on the foregoing, the **patient** is able to access **his/her own** hearing without having to consult a hearing health professional. As such, there is no reason to modify Rho to present data relevant for the hearing health professional to determine the patient's hearing. Indeed, such data would not only be useless to the (untrained) **patient**, but would likely confuse the (untrained) **patient**, especially if it was presented in a graphical format. Therefore, Applicant respectfully submits that presenting data relevant for a hearing health professional to determine the patient's hearing would render the system of Rho **unsatisfactory for its intended purpose**.

In view of the above, Applicant respectfully requests withdrawal of the rejection against independent claim 1.

As for dependent claims 2-31, although they may recite independently allowable subject matter, these claims depend from independent claim 1 and are therefore allowable for at least the same reasons.

CONCLUSION

In view of the above, Applicant believes the pending claims 1-50 are in condition for allowance and the Examiner is respectfully requested to pass this application to issuance.

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